

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)
M. Halter) Group Art Unit: 2821
Serial No.: 10/802,277) Examiner: H. Philogene
Filed: March 17, 2004)
For: SPECTRALLY CALIBRATABLE)
MULTI-ELEMENT RGB LED)
LIGHT SOURCE)

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Attorney Docket No. 57108/367051

Communication Regarding Patent Term Adjustment (PTA)
Indicated in Notice of Allowance

Sir:

1. A Notice of Allowance was mailed on April 3, 2009 for the present application. One of the attachments to the Notice of Allowance was a Determination of Patent Term Adjustment under 35 U.S.C. § 154(b) (attached as Exhibit A), indicating that the total PTA due is 1174 days. It is believed that the correct total PTA to date is actually 1515 days.

2. In accordance with 37 C.F.R. § 1.705(b), this application for patent term adjustment is filed no later than the payment of the issue fee but after the date of mailing of the notice of allowance. It is accompanied by (1) the required fee set forth in 1.18(e); and (2) the required statement of facts and the bases for adjustment.

3. The determination of the total PTA is erroneous because the U.S. Patent and Trademark Office's (PTO) PTA calculator failed to account for the delay under 35 U.S.C. § 154(b)(1)(B) ("B delay"), which guarantees no more than a three-year application pendency. The two PTO delays (the "A delay" and the "B delay") should be added together in accordance with the reasoning in *Wyeth et al. v. Dudas*, 580

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8. Any patent granted on this application is not subject to a terminal disclaimer. *See* 37 C.F.R. § 1.705(b)(2)(iii).

The Commissioner is authorized to charge any additional fees that may be due or credit any overpayment to Deposit Account No. 11-0855.

Respectfully submitted,



Dean W. Russell
Rcg. No. 33452
Attorney for Assignee

KILPATRICK STOCKTON LLP
1100 Peachtree Street, Suite 2800
Atlanta, Georgia 30309
Telephone: 404-815-6528

Attachment: Exhibit A – Copy of PTA History for this Application